

CA NO. 17-55584
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LYUBOMIR YORDANOV,

Defendant-Appellant.

DC NO. CV 17-2034-CAS
CV 16-170-CAS

**APPELLANT'S MOTION FOR STAY OF SURRENDER TO BULGARIA
DURING PENDENCY OF APPEAL**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE CHRISTINA A. SNYDER
United States District Judge

HILARY POTASHNER
Acting Federal Public Defender
ASHFAQ G. CHOWDHURY
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-2854
Facsimile: (213) 894-0081
Email: Ron_Chowdhury@fd.org

Attorneys for Defendant-Appellant

I. INTRODUCTION

Mr. Yordanov moves for an order from this Court staying his surrender to Bulgaria while his appeal before this Court is pending.

This motion is based on the attached Declaration of Ashfaq G. Chowdhury and Rule 23(a) of the Federal Rules of Appellate Procedure, which rule prohibits the person having custody of the petitioner in the underlying habeas corpus proceeding from transferring custody of the petitioner without approval from the court of appeals: “Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule.” FRAP 23(a).

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: May 25, 2017

By /s/ Ashfaq G. Chowdhury
ASHFAQ G. CHOWDHURY
Deputy Federal Public Defender
Attorney for Defendant-Appellant

DECLARATION OF ASHFAQ G. CHOWDHURY

I, Ashfaq G. Chowdhury, hereby declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California, and I am appointed to represent defendant Lyubomir Mihailov Yordanov in this matter.

2. On January 18, 2017, the magistrate judge issued a 37-page order denying Mr. Yordanov's Motion to Dismiss the government's Request for Extradition and Certifying Extraditability. Docket No. 16-CV-170-CAS-E, Docket No. 54.

3. On April 18, 2017, the district court issued an order affirming the magistrate's January 18, 2017 order and denying Mr. Yordanov's petition for habeas relief. Docket No. 17-CV-2034-CAS, Docket No. 9.

4. Mr. Yordanov makes this application to stay his surrender by the United States government to the Bulgarian government pending the resolution of his appeal to this Court from the district court's April 18, 2017 order. The issues raise in the extradition proceeding before the magistrate and the district court are complicated and involved, as is made clear in the magistrate court's lengthy order denying Mr. Yordanov's Motion to Dismiss the Extradition Proceeding and certifying extradition.

5. Given that surrender of Mr. Yordanov to Bulgarian authorities and his removal from the country while his appeal in this Court is pending would cause him irreparable harm and that staying his surrender and extradition to allow Mr. Yordanov to see his appeal through causes no harm to the government -- especially given that Mr. Yordanov is in custody -- Mr. Yordanov respectfully suggests that the motion for stay should be granted. Serious legal questions have been raised,

and the balance of hardships tips sharply in his favor. *See, e.g., Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983).

6. Moreover, Rule 23(a) of the Federal Rules of Appellate Procedure prohibits the person having custody of the petitioner in the underlying habeas corpus proceeding from transferring custody of the petitioner without approval from the court of appeals: “Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule.” FRAP 23(a).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: May 25, 2017

By /s/ Ashfaq G. Chowdhury

ASHFAQ G. CHOWDHURY
Deputy Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on **May 25, 2017**, I electronically filed the foregoing **APPELLANT’S MOTION FOR STAY OF SURRENDER TO BULGARIA DURING THE PENDENCY OF APPEAL** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: May 25, 2017

/s/ Sonia Casas
SONIA CASAS